

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Federal State Joint Board on
Universal Service
RCC Holdings, Inc.
Petition for Designation as an
Eligible Telecommunications Carrier
Throughout its Licensed Service Area
In the State of Alabama
CC Docket No. 96-45

MEMORANDUM OPINION AND ORDER

Adopted: November 26, 2002

Released: November 27, 2002

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant the petition of RCC Holdings (RCC Holdings) to be designated as an eligible telecommunications carrier (ETC) throughout its licensed service area in the state of Alabama pursuant to section 214(e)(6) of the Communications Act of 1934, as amended (the Act).1 In so doing, we conclude that RCC Holdings, a commercial mobile radio service (CMRS) carrier, has satisfied the statutory eligibility requirements of section 214(e)(1).2 Specifically, we conclude that RCC Holdings has demonstrated that it will offer and advertise the services supported by the federal universal service support mechanisms throughout the designated service area. We find that the designation of RCC Holdings as an ETC in those areas served by rural telephone companies serves the public interest by promoting competition and the provision of new technologies to consumers in high-cost and rural areas of Alabama.

2. Where RCC Holdings is not licensed to serve an entire study area of a rural telephone company affected by this designation, RCC Holdings has requested that we redefine the service areas of the affected rural telephone companies by wire center boundary for ETC designation purposes.3 We agree to the redefinition proposed by RCC Holdings, subject to agreement by the Alabama Public Service Commission (Alabama Commission) in accordance with applicable Alabama Commission requirements. We find that the Alabama Commission's first-hand knowledge of the rural areas in question uniquely

1 RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama, filed March 19, 2002 (RCC Holdings Petition).

2 47 U.S.C. § 214(e)(1).

3 RCC Holdings Petition at 10-13. RCC Holdings' CMRS licensed service area does not completely encompass three of the redefined service areas. See Appendix C. In those cases, we designate RCC Holdings as an ETC for the portions of the wire centers it is licensed to serve, subject to the Alabama Public Service Commission's agreement to redefine service areas as discussed in Section III.E, infra.

qualifies it to examine the redefinition proposal and determine whether it should be approved.⁴

3. Several parties to this proceeding raise concerns about the nature of high-cost support with regard to competitive ETCs.⁵ Such concerns include, for example, questions about the impact on the universal service fund of supporting competitive ETCs, as well as questions about subsidizing multiple lines used by the same subscriber. Although we find that these issues reach beyond the scope of this Order, which designates a particular carrier as an ETC, we recognize that these are important issues regarding universal service high-cost support. We note that the Commission has recently requested the Federal-State Joint Board on Universal Service (Joint Board) to provide recommendations to the Commission on the Commission's rules relating to high-cost universal service support in study areas in which a competitive ETC is providing service, as well as the Commission's rules regarding support for second lines.⁶

II. BACKGROUND

A. The Act

4. Section 254(e) of the Act provides that "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support."⁷ Pursuant to section 214(e)(1), a common carrier designated as an ETC must offer and advertise the services supported by the federal universal service mechanisms throughout the designated service area.⁸

5. Section 214(e)(2) of the Act gives state commissions the primary responsibility for performing ETC designations.⁹ Section 214(e)(6), however, directs the Commission, upon request, to designate as an ETC "a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission."¹⁰ Under section 214(e)(6), upon request and consistent with the public interest, convenience, and necessity, the Commission may, with respect to an area served by a rural telephone company, and shall, in all other cases, designate more than one common carrier as an ETC for a designated service area, so long as the requesting carrier meets the requirements of section 214(e)(1).¹¹ Before designating an additional ETC for an area served by a rural telephone

⁴ If the Alabama Commission does not agree to the proposal to redefine the affected rural service areas, we will reexamine our decision with regard to redefining these service areas.

⁵ See Alabama Commission Comments at 4-6, Alabama Rural LECs Comments at 18-19, Alabama Rural LECs Reply Comments at 6-7 and NTCA Comments at 9. See also Letter from Mark D. Wilkerson, Counsel for the Alabama Rural LECs, to Marlene Dortch, FCC, dated Sept. 5, 2002 (Rural LECs Sept. 5 *ex parte*).

⁶ See *Federal-State Joint Board on Universal Service*, CC Docket 96-45, FCC 02-307, Order (rel. Nov. 8, 2002).

⁷ 47 U.S.C. § 254(e).

⁸ 47 U.S.C. § 214(e)(1).

⁹ 47 U.S.C. § 214(e)(2). See also *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscriberhip in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12255, para. 93 (2000) (*Twelfth Report and Order*).

¹⁰ 47 U.S.C. § 214(e)(6). See, e.g., *Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota*, CC Docket No. 96-45, Memorandum Opinion and Order, 16 FCC Rcd 18133 (2001) (*Western Wireless Pine Ridge Order*); *Pine Belt Cellular, Inc. and Pine Belt PCS, Inc. Petition for Designation as an Eligible Telecommunications Carrier*, CC Docket No. 96-45, Memorandum Opinion and Order, 17 FCC Rcd 9589 (Wireline Comp. Bur. 2002).

¹¹ 47 U.S.C. § 214(e)(6).

company, the Commission must determine that the designation is in the public interest.¹²

B. Commission Requirements for ETC Designation and Redefinition of a Service Area

6. Filing Requirements for ETC Designation. On December 29, 1997, the Commission released a Public Notice establishing the requisite procedures for carriers seeking Commission designation as an ETC under section 214(e)(6).¹³ In the *Section 214(e)(6) Public Notice*, the Commission delegated authority to the Chief of the Wireline Competition Bureau to designate carriers as ETCs pursuant to section 214(e)(6).¹⁴ The *Section 214(e)(6) Public Notice* required petitioners to: (1) submit a certification and brief statement of supporting facts demonstrating that the petitioner is “not subject to the jurisdiction of a state commission;” (2) submit a certification that the petitioner offers all services designated for support by the Commission pursuant to section 254(c); (3) provide a certification that the petitioner offers the supported services “either using its own facilities or a combination of its own facilities and resale of another carrier’s services;” (4) offer a description of how the petitioner “advertise[s] the availability of [supported] services and the charges therefor using media of general distribution;” and (5) if the petitioner is not a rural telephone company, it must include a detailed description of the geographic service areas for which it requests an ETC designation from the Commission.¹⁵

7. Twelfth Report and Order. On June 30, 2000, the Commission released the *Twelfth Report and Order* which, among other things, set forth how a carrier seeking ETC designation from the Commission must demonstrate that the state commission lacks jurisdiction to perform the ETC designation.¹⁶ Carriers seeking designation as an ETC for service provided on non-tribal lands must provide the Commission with an “affirmative statement” from the state commission or a court of competent jurisdiction that the carrier is not subject to the state commission’s jurisdiction.¹⁷ The Commission defined an “affirmative statement” as “any duly authorized letter, comment, or state commission order indicating that [the state commission] lacks jurisdiction to perform the designation over a particular carrier.”¹⁸ The requirement to provide an “affirmative statement” ensures that the state commission has had “a specific opportunity to address and resolve issues involving a state commission’s authority under state law to regulate certain carriers or classes of carriers.”¹⁹

8. Redefinition of a Service Area. Under section 214(e)(5), “[i]n the case of an area served by a rural telephone company, ‘service area’ means such company’s ‘study area’ unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.”²⁰ Section 54.207(d) permits the Commission to initiate a proceeding to consider a definition of a service area that is different from a rural telephone company’s study area as long as the Commission seeks agreement on the new definition with the applicable state commission.²¹ Under section 54.207(d)(1), the

¹² *Id.*

¹³ *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, Public Notice, 12 FCC Rcd 22947 (1997) (*Section 214(e)(6) Public Notice*).

¹⁴ *Id.* at 22948. The Wireline Competition Bureau was previously known as the Common Carrier Bureau.

¹⁵ *Id.* at 22948-49.

¹⁶ See *Twelfth Report and Order*, 15 FCC Rcd at 12255-65, paras. 93-114.

¹⁷ *Twelfth Report and Order*, 15 FCC Rcd at 12255, para. 93.

¹⁸ *Twelfth Report and Order*, 15 FCC Rcd at 12264, para. 113.

¹⁹ *Id.* (citations omitted).

²⁰ 47 U.S.C. § 214(e)(5).

²¹ See 47 C.F.R. § 54.207(d). Any proposed definition will not take effect until both the Commission and the state commission agree upon the new definition. See 47 C.F.R. § 54.207(d)(2).

Commission must petition a state commission with the proposed definition according to that state commission's procedures.²² In that petition, the Commission must provide its proposal for redefining the service area and its decision presenting reasons for adopting the new definition, including an analysis that takes into account the recommendations of the Joint Board.²³ When the Joint Board recommended that the Commission retain the current study areas of rural telephone companies as the service areas for such companies, the Joint Board made the following observations: (1) the potential for "cream skimming" is minimized by retaining study areas because competitors, as a condition of eligibility, must provide services throughout the rural telephone company's study area; (2) the Telecommunications Act of 1996 (1996 Act), in many respects, places rural telephone companies on a different competitive footing from other local exchange companies; and (3) there would be an administrative burden imposed on rural telephone companies by requiring them to calculate costs at something other than a study area level.²⁴

C. RCC Holdings' Petition

9. On March 19, 2002, RCC Holdings filed with this Commission a petition pursuant to section 214(e)(6) seeking designation as an ETC throughout its licensed service area in the state of Alabama.²⁵ RCC Holdings contends that the Alabama Commission has issued an "affirmative statement" that the Alabama Commission does not have jurisdiction to designate a CMRS carrier as an ETC. Accordingly, RCC Holdings asks the Commission to exercise jurisdiction and designate RCC Holdings as an ETC pursuant to section 214(e)(6).²⁶ RCC Holdings also maintains that it satisfies the statutory and regulatory prerequisites for ETC designation, and that designating RCC Holdings as an ETC will serve the public interest.²⁷

10. RCC Holdings also requests the Commission to redefine the service areas of seven rural

²² See 47 C.F.R. § 54.207(d)(1). RCC Holdings submits that the state of Alabama has no process for redefining service areas. See Supplement to RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama, filed August 26, 2002 at 1 (August 26 Supplement).

²³ See 47 C.F.R. § 54.207(d)(1).

²⁴ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 12 FCC Rcd 87, 179-80, paras. 172-74 (1996) (*Recommended Decision*).

²⁵ See generally RCC Holdings Petition. On April 7, 2002, the Wireline Competition Bureau released a Public Notice seeking comment on the RCC Holdings Petition. See *Wireline Competition Bureau Seeks Comment on RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama*, CC Docket No. 96-45, Public Notice, DA 02-746 (rel. Apr. 2, 2002). See also 67 Fed. Reg. 19754 (Apr. 23, 2002).

²⁶ RCC Holdings Petition at 1-3, 9-10, 17, Amendment at 1-2.

²⁷ RCC Holdings Petition at 1, 13-16. The Alabama Rural LECs filed a motion asking the Bureau to suspend our "resolution date" for the RCC Holdings Petition. See Motion to Suspend Procedural Dates in CC Docket No. 96-45, DA 02-746 (filed Sept. 16, 2002). The Alabama Rural LECs requested that we suspend the "resolution date" until the Commission has addressed in a separate rulemaking proceeding the issues discussed *infra* in para. 32 regarding the provision of support to competitive ETCs. We deny the Alabama Rural LECs' request. Suspending this proceeding until a proceeding on competitive ETCs is resolved will unnecessarily delay resolution of this matter well beyond the Commission's informal commitment to resolve ETC petitions within a six-month time frame. See *Twelfth Report and Order*, 15 FCC Rcd at 12265, para. 114. We do extend the time frame for our decision beyond six months, however, in order to consider fully the various *ex partes* filed late in this proceeding. See, e.g. Rural LECs Sept. 5 *ex parte*; Letter from David A. LaFuria, Counsel for RCC Holdings, Inc., to Marlene H. Dortch, FCC, dated Sept. 11, 2002; Letter from David A. LaFuria, Counsel for RCC Holdings, Inc., to Anita Cheng, FCC, dated Sept. 20, 2002, corrected Sept. 25, 2002; Letter from Mark D. Wilkerson, Counsel for the Alabama Rural LECs, to Marlene Dortch, FCC, dated Oct. 2, 2002; Letter from David A. LaFuria, Counsel for RCC Holdings, Inc., to Marlene H. Dortch, FCC, dated Oct. 7, 2002, corrected Oct. 8, 2002; Letter from Mark D. Wilkerson, Counsel for the Alabama Rural LECs, to Marlene Dortch, FCC, dated Oct. 15, 2002.

telephone companies because it is not able to serve the entire study areas of these companies.²⁸ RCC Holdings states that as a wireless carrier it is restricted to providing service only in those areas where it is licensed by the Commission.²⁹ It adds that it is not picking and choosing the lowest cost wire centers of the affected rural telephone companies but instead is basing its requested ETC area solely on its licensed service area and proposes to serve the entirety of that area.³⁰ RCC Holdings maintains that the proposed redefinition of the rural telephone company service areas is consistent with the recommendations regarding rural telephone company study areas set forth by the Joint Board in its *Recommended Decision*.³¹

III. DISCUSSION

11. We find that RCC Holdings has met all the requirements set forth in sections 214(e)(1) and (e)(6) to be designated as an ETC by this Commission. We conclude that RCC Holdings has demonstrated that the Alabama Commission lacks the jurisdiction to perform the designation and that the Commission therefore may consider RCC Holdings' petition under section 214(e)(6). We also conclude that RCC Holdings has demonstrated that it will offer and advertise the services supported by the federal universal service support mechanisms throughout the designated service area upon designation as an ETC. In addition, we find that the designation of RCC Holdings as an ETC in those areas served by rural telephone companies serves the public interest by promoting competition and the provision of new technologies to consumers in high-cost and rural areas of Alabama. Pursuant to our authority under section 214(e)(6), we therefore designate RCC Holdings as an ETC throughout its licensed service area in the state of Alabama. In areas where RCC Holdings cannot serve the entire study area of a rural telephone company, RCC Holdings' ETC designation shall be subject to the Alabama Commission's agreement on a new definition for the rural telephone company service areas.³² In all other areas, as described herein, RCC Holdings' ETC designation is effective immediately.

A. Commission Authority to Perform the ETC Designation

12. We find that RCC Holdings has demonstrated that the Alabama Commission lacks the jurisdiction to perform the requested ETC designation and that the Commission has authority to consider RCC Holdings' petition under section 214(e)(6) of the Act. RCC Holdings submitted as an "affirmative statement" an order issued by the Alabama Commission addressing a petition filed by several CMRS carriers seeking ETC designation or, in the alternative, clarification regarding the jurisdiction of the Alabama Commission to grant ETC status to wireless carriers.³³ In the *Alabama Commission Order*, the Alabama Commission concluded that it "has no authority to regulate, *in any respect*, cellular services, broadband personal communications services, and commercial mobile radio services in Alabama."³⁴ The Alabama Commission advised the petitioners and "all other wireless providers seeking ETC status [to] pursue their ETC designation request with the FCC as provided by 47 U.S.C. § 214(e)(6)."³⁵ The

²⁸ See RCC Holdings Petition at 10-13.

²⁹ *Id.* at 12.

³⁰ *Id.*

³¹ *Id.* at 12-13. See 47 U.S.C. § 214(e)(5).

³² RCC Holdings submits that it cannot serve the entire study areas of the following rural telephone companies: Butler Telephone Company, Alltel Alabama, Interstate Telephone Company, Millry Telephone Company, Mon-Cre Telephone Cooperative, Frontier Communications of the South, Inc. and Frontier Communications of Alabama, Inc.

³³ See RCC Holdings Petition, Amendment at Exhibit A (Alabama Public Service Commission, *Pine Belt Cellular, Inc. and Pine Belt PCS, Inc.*, Order, Docket No. U-4400 at 1-3 (March 12, 2002) (*Alabama Commission Order*)).

³⁴ *Alabama Commission Order* at 2 (emphasis in original).

³⁵ *Id.*

Alabama Commission's decision in the *Alabama Commission Order* is consistent with the Code of Alabama and a March 2000 declaratory ruling issued by the Alabama Commission.³⁶

13. We reject the contention of the Alabama Rural LECs that RCC Holdings has not provided an "affirmative statement" that meets the Commission's requirements found in the *Twelfth Report and Order*.³⁷ To the contrary, as required by the *Twelfth Report and Order*, the Alabama Commission was given the specific opportunity to address and resolve the issue of whether it has authority to regulate CMRS providers as a class of carriers when it rendered its decision in the *Alabama Commission Order*.³⁸ We find it sufficient that the Alabama Commission determined that it has no authority to regulate CMRS carriers "in any respect" and that *all* "wireless providers seeking ETC status in Alabama should pursue their ETC designation request with the FCC" ³⁹ Furthermore, the Alabama Commission filed comments in this proceeding stating that it does not have regulatory authority over CMRS providers in Alabama.⁴⁰ Therefore, based on the record before us, we find that the Alabama Commission lacks jurisdiction to designate RCC Holdings as an ETC and that we have authority to perform the requested ETC designation in the state of Alabama pursuant to section 214(e)(6).⁴¹

B. Offering and Advertising the Supported Services

14. Offering the Services Designated for Support. We find that RCC Holdings has demonstrated that it will offer the services supported by the federal universal service support mechanism upon designation as an ETC. We therefore conclude that RCC Holdings complies with the requirement of section 214(e)(1)(A) to "offer the services that are supported by Federal universal service support mechanisms under section 254(c)."⁴² As noted in its petition, RCC Holdings is an A-Band licensee authorized to provide cellular radiotelephone service in the Alabama 3, 4, 5, and 7 Rural Service Areas, Cellular Market Areas 309, 310, 311, and 313.⁴³ RCC Holdings states that it currently provides all of the services and functionalities enumerated in section 54.101(a) of the Commission's rules throughout its cellular service area in Alabama.⁴⁴ Upon designation as an ETC, RCC Holdings also indicates that it will

³⁶ *Id.* See generally Alabama Public Service Commission, *Bell South Mobility, Inc. Petition for Declaratory Ruling*, Order, Docket No. 26414 (March 2, 2000) (*Alabama Declaratory Ruling*). The Alabama Code definition of "cellular telecommunications services" includes all cellular services, broadband personal communications services and CMRS. *Id.* at 2. See also Ala. Code § 40-21-120(1)a (2002). The Alabama Code definition of "cellular telecommunications provider" includes all licensees of the Federal Communications Commission to provide cellular telecommunication services, broadband personal communications services, CMRS, and all resellers of such services. See *Alabama Declaratory Ruling* at 2. See also Ala. Code § 40-21-120(1)b (2002).

³⁷ See Alabama Rural LECs Comments at 6-7. The Alabama Rural LECs contend that RCC Holdings must obtain an order directed to RCC Holdings rather than rely on language in the *Alabama Commission Order*. See Alabama Rural LECs Reply Comments at 2.

³⁸ See *Twelfth Report and Order*, 15 FCC Rcd at 12264, para 113.

³⁹ See *Alabama Commission Order* at 2.

⁴⁰ See Alabama Commission Comments at 1.

⁴¹ 47 U.S.C. § 214(e)(6). As noted above, the Commission has specifically delegated this authority to the Wireline Competition Bureau.

⁴² 47 U.S.C. § 214(e)(1)(A). The Commission has defined the services that are to be supported by the federal universal service support mechanisms to include: (1) voice grade access to the public switched network; (2) local usage; (3) Dual Tone Multifrequency (DTMF) signaling or its functional equivalent; (4) single-party service or its functional equivalent; (5) access to emergency services, including 911 and enhanced 911; (6) access to operator services; (7) access to interexchange services; (8) access to directory assistance; and (9) toll limitation for qualifying low-income customers. 47 C.F.R. § 54.101(a).

⁴³ RCC Holdings Petition at 1.

⁴⁴ *Id.* at 2.

make available a universal service offering over its cellular network infrastructure using the same facilities it uses to serve its existing customers.⁴⁵ RCC Holdings states that its universal service offering will consist of all of the services supported by the universal service support mechanism plus Lifeline service.⁴⁶ Finally, RCC Holdings commits to providing its universal service offering to any requesting customer within its designated service area.⁴⁷

15. We reject the Alabama Rural LECs' argument that RCC Holdings does not offer all of the services supported by the Federal universal service support mechanisms as required by section 214(e)(1)(A).⁴⁸ Specifically, the Alabama Rural LECs claim that RCC Holdings: (1) does not currently provide all of the supported services in all of the areas where it requests designation because of "dead spots" in RCC Holdings' network; and (2) fails to allege that it is currently providing local usage and has not described its universal service offerings.⁴⁹ The "dead-spots" referred to in affidavits submitted by the Alabama Rural LECs are identified as pinpoint locations where certain Alabama rural telephone company employees were unable to place calls, or were unable to communicate clearly with a called party on a RCC Holdings, Inc. d/b/a Unicel cellular phone.⁵⁰ In addition, the Alabama Commission states in its comments that "[t]he lack of [wireless] coverage in rural areas also raises serious concerns whether RCC presently has, or will acquire, the ability in a timely manner to provide emergency services in all of its rural service territories."⁵¹

16. We find that the existence of "dead spots" in RCC Holdings' network, if any, does not preclude us from designating RCC Holdings as an ETC. The Commission has already determined that a telecommunications carrier's inability to demonstrate that it can provide ubiquitous service at the time of its request for designation as an ETC should not preclude its designation as an ETC.⁵² To require a carrier to actually provide the supported services before it is designated an ETC has the effect of prohibiting the ability of prospective entrants from providing telecommunications service.⁵³ Instead, "a new entrant can make a reasonable demonstration . . . of its capability and commitment to provide universal service without the actual provision of the proposed service."⁵⁴ Moreover, RCC Holdings has committed to improve its network.⁵⁵ It states that coverage gaps can and will be filled once RCC Holdings begins

⁴⁵ *Id.* See also RCC Holdings Petition at Exhibit B, Declaration Under Penalty of Perjury.

⁴⁶ RCC Holdings Petition at 4-8.

⁴⁷ *Id.* at 2.

⁴⁸ See Alabama Rural LECs Comments at 9-15 and Alabama Rural LECs Reply Comments at 3-4.

⁴⁹ *Id.*

⁵⁰ See Alabama Rural LECs Comments at Exhibit A and Alabama Rural LECs Reply Comments at Exhibit A. We note that in one of the affidavits filed by the Alabama Rural LECs, the alleged "dead spot" does not appear to be within RCC Holdings' CMRS licensed area. See Alabama Rural LECs Reply Comments at Exhibit A.

⁵¹ See Alabama Commission Comments at 3.

⁵² See *Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, Declaratory Ruling, CC Docket No. 96-45, 15 FCC Rcd 15168 at 15175, para. 17 (2000) (*Declaratory Ruling*), *pet'n for recons. pending*.

⁵³ See *Declaratory Ruling*, 15 FCC Rcd at 15173-74, paras. 12-14. In the *Declaratory Ruling*, the Commission stated that "a new entrant cannot reasonably be expected to be able to make the substantial financial investment required to provide the supported services in high-cost areas without some assurance that it will be eligible for federal universal service support." *Id.* at 15173, para. 13. We agree with RCC Holdings that it has been high-cost support that has enabled many rural carriers to extend their networks into high-cost areas. See RCC Holdings Reply Comments at 7.

⁵⁴ *Declaratory Ruling*, 15 FCC Rcd at 15178, para. 24.

⁵⁵ RCC Holdings states that it will use any high-cost support it receives "to improve its network and enable Alabama's rural customers to have a meaningful choice of service providers." RCC Holdings Reply Comments at 7.

receiving high-cost support.⁵⁶

17. In addition, the Commission's rules acknowledge the existence of dead spots.⁵⁷ "Dead spots" are defined as "[s]mall areas within a service area where the field strength is lower than the minimum level for reliable service."⁵⁸ Section 22.99 of the Commission's rules states that "[s]ervice within dead spots is presumed."⁵⁹ Additionally, the Commission's rules provide that "cellular service is considered to be provided in all areas, including dead spots"⁶⁰ Because "dead spots" are acknowledged by the Commission's rules, we do not agree with the Alabama Rural LECs that finding current "dead spots" in RCC Holdings' network demonstrates that RCC Holdings is not "willing or capable of providing acceptable levels of service" throughout its service area.⁶¹

18. For these reasons, we find that RCC Holdings, because it already provides or commits to provide the supported services, and because it will continue to fill in coverage gaps once it receives high-cost support, has demonstrated its capability and commitment to provide universal service.⁶² Moreover, we emphasize that if RCC Holdings fails to fulfill its ETC obligations after it begins receiving universal service support, the Commission has authority to revoke its ETC designation.⁶³

19. We find sufficient RCC Holdings' showing that it will offer minimum local usage as part of its universal service offering. Accordingly, we dismiss the Alabama Rural LECs' claim that RCC Holdings should be denied ETC designation because it fails to allege that it is currently providing local usage.⁶⁴ Although the Commission has not set a minimum local usage requirement, in the *Universal Service Order*, the Commission determined that ETCs should provide some minimum amount of local usage as part of their "basic service" package of supported services.⁶⁵ RCC Holdings states that it will comply with any and all minimum local usage requirements adopted by the FCC.⁶⁶ It adds that it will meet the local usage requirement by including a variety of local usage plans as part of a universal service offering.⁶⁷ We find that RCC Holdings' commitment to provide local usage is sufficient. Moreover, contrary to the arguments of the Alabama Rural LECs,⁶⁸ RCC Holdings is not required to provide a detailed description of its planned universal service offerings beyond its commitment to provide, or statement that it is now providing, all of the services supported by the universal service support mechanism.⁶⁹

⁵⁶ *Id.* at 8.

⁵⁷ *See* 47 C.F.R. § 22.99.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *See* 47 C.F.R. § 22.911(b).

⁶¹ *See* Alabama Rural LECs Comments at 10.

⁶² *See* RCC Holdings Petition at Exhibit B, Declaration Under Penalty of Perjury.

⁶³ *See Declaratory Ruling*, 15 FCC Rcd at 15174, para. 15. *See also* 47 U.S.C. § 254(e).

⁶⁴ Alabama Rural LECs Comments at 13-14.

⁶⁵ *See Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776, 8813, para. 67 (1997) (*Universal Service Order*) (subseq. history omitted). Although the Commission's rules define "local usage" as "an amount of minutes of use of exchange service, prescribed by the Commission, provided free of charge to end users," the Commission has not specified a number of minutes of use. *See* 47 C.F.R. § 54.101(a)(2).

⁶⁶ *See* RCC Holdings Petition at 5.

⁶⁷ *Id.*

⁶⁸ *See* Alabama Rural LECs Comments at 13-14.

⁶⁹ *See generally Declaratory Ruling.*

20. Offering the Supported Services Using a Carrier's Own Facilities. We conclude that RCC Holdings has demonstrated that it satisfies the requirement of section 214(e)(1)(A) that it offer the supported services using either its own facilities or a combination of its own facilities and resale of another carrier's services.⁷⁰ RCC Holdings states that it intends to provide the supported services using its cellular network infrastructure, which includes "the same antenna, cell-site, tower, trunking, mobile switching, and interconnection facilities used by the company to serve its existing conventional mobile cellular service customers."⁷¹ We find this certification sufficient to satisfy the facilities requirement of section 214(e)(1)(A).

21. Advertising the Supported Services. We conclude that RCC Holdings has demonstrated that it satisfies the requirement of section 214(e)(1)(B) to advertise the availability of the supported services and the charges therefor using media of general distribution.⁷² RCC Holdings certifies that it "will use media of general distribution that it currently employs to advertise its universal service offerings throughout the service areas designated by the Commission."⁷³ Contrary to the comments filed by the Alabama Rural LECs, we find that this certification satisfies section 214(e)(1)(B).⁷⁴ The Alabama Rural LECs suggest that RCC Holdings must supply proof as to how it intends to comply with the rules requiring an ETC to publicize the availability of its Lifeline and Linkup services.⁷⁵ The publicity rules for Lifeline and Linkup services, however, apply only to already-designated ETCs.⁷⁶ Accordingly, RCC Holdings will not be required to publicize Lifeline and Linkup until it is designated as an ETC. Therefore, at this time, it is sufficient that RCC Holdings commits to advertising the supported services using media of general distribution. Moreover, as we have stated in prior decisions, because an ETC receives universal service support only to the extent that it serves customers, we believe that strong economic incentives exist, in addition to the statutory obligation, for an ETC to advertise its universal service offering in its designated service area.⁷⁷

C. Public Interest Analysis

22. We conclude that it is in the public interest to designate RCC Holdings as an ETC in Alabama in areas that are served by rural telephone companies.⁷⁸ We conclude that RCC Holdings has made a threshold demonstration that its service offering fulfills several of the underlying federal policies favoring competition and the provision of affordable telecommunications service to consumers.

23. We find that the customers in Alabama affected by this designation will benefit from the designation of RCC Holdings as an ETC. An important goal of the 1996 Act is to open local telecommunications markets to competition.⁷⁹ The Commission has held that designation of qualified

⁷⁰ 47 U.S.C. § 214(e)(1)(A).

⁷¹ RCC Holdings Petition at 8.

⁷² 47 U.S.C. § 214(e)(1)(B).

⁷³ RCC Holdings Petition at 9.

⁷⁴ See Alabama Rural LECs Comments at 15-16.

⁷⁵ See Alabama Rural LECs Comments at 15-16. See 47 C.F.R. §§ 54.405(b) and 54.411(d).

⁷⁶ See *Twelfth Report and Order*, 15 FCC Rcd at 12249-50, paras. 76-80.

⁷⁷ See *Western Wireless Pine Ridge Order*, 16 FCC Rcd at 18137, para. 10.

⁷⁸ See 47 U.S.C. § 214(e)(6).

⁷⁹ According to the Joint Explanatory Statement, the purpose of the 1996 Act is "to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly the private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition. . . ." Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. at 113 (Joint Explanatory Statement).

ETCs promotes competition and benefits consumers by increasing customer choice, innovative services, and new technologies.⁸⁰ Competition will allow customers in rural Alabama to choose service based on pricing, service quality, customer service, and service availability. In addition, we find that the provision of competitive service will facilitate universal service to the benefit of consumers in Alabama by creating incentives to ensure that quality services are available at “just, reasonable, and affordable rates.”⁸¹

24. We find that the designation of RCC Holdings as an ETC may provide benefits to rural consumers that are not available from the incumbent carriers. For example, RCC Holdings submits that it “believes that in all cases its local calling area will be substantially larger [than the incumbent carrier’s], which will reduce intra-LATA toll charges typically associated with wireline service.”⁸² It adds that “[w]ireline customers placing calls beyond their local calling area will face toll charges whereas RCC customers making similar calls within [RCC Holdings’] service area will not be subjected to such charges.”⁸³ Also, RCC Holdings indicates that it will include a variety of local usage plans as part of its universal service offering.⁸⁴ The Commission has stated that rural consumers may benefit from expanded local calling areas and an offering of a variety of calling plans because such options may make intrastate toll calls more affordable to those consumers.⁸⁵

25. In addition, we conclude that consumers will not be harmed by the designation of RCC Holdings as an ETC in rural areas in Alabama. We acknowledge that Congress expressed a specific intent to preserve and advance universal service in rural areas as competition emerges.⁸⁶ The Commission has indicated that in establishing a public interest requirement for those areas served by rural telephone companies, Congress was concerned that consumers in rural areas continue to be adequately served should the incumbent carrier exercise its option to relinquish its ETC designation under section 214(e)(4).⁸⁷ Here, however, RCC Holdings demonstrates both the commitment and ability to provide service to any requesting customer within the designated service area using its own facilities. Thus, there is no reason to believe that consumers in the affected rural areas will not continue to be adequately served should the incumbent carrier seek to relinquish its ETC designation.⁸⁸ We find nothing in the record before us to indicate that RCC Holdings may be unable to satisfy its statutory ETC obligations after designation. In addition, nothing in the record indicates that any of the affected rural telephone

⁸⁰ See *Western Wireless Pine Ridge Order*, 16 FCC Rcd 18137, para. 12.

⁸¹ 47 U.S.C. § 254(b)(1).

⁸² RCC Holdings Petition at 15.

⁸³ See August 26 Supplement at 2.

⁸⁴ RCC Holdings Petition at 5.

⁸⁵ See, e.g., *Twelfth Report and Order*, 15 FCC Rcd at 12237-38, paras. 56-58.

⁸⁶ 47 U.S.C. § 214(e)(6) (stating that before designating an additional ETC for an area served by a rural telephone company, the Commission shall find that the designation is in the public interest). See also 47 U.S.C. § 254(b)(3).

⁸⁷ See *Western Wireless Pine Ridge Order*, 16 FCC Rcd at 18139, para. 16. We note that even if the incumbent carrier determined that it no longer desired to be designated as an ETC, section 214(e)(4) requires the ETC seeking to relinquish its ETC designation to give advance notice to the Commission. Prior to permitting the ETC to cease providing universal service in an area served by more than one ETC, section 214(e)(4) requires that the Commission “ensure that all customers served by the relinquished carrier will continue to be served, and shall require sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier.” The Commission may grant a period, not to exceed one year, within which such purchase or construction shall be completed. 47 U.S.C. § 214(e)(4).

⁸⁸ See RCC Holdings Petition at 2. We note, however, that an ETC is not required to provide service using its own facilities exclusively. Section 214(e)(1)(A) allows a carrier designated as an ETC to offer the supported services “either using its own facilities or a combination of its own facilities and resale of another carrier’s services.” 47 U.S.C. § 214(e)(1)(A).

companies have intentions of relinquishing their ETC designations.

26. Based on the record before us, we conclude that grant of this ETC designation is consistent with the public interest. The parties opposing this designation have not presented persuasive evidence to support their contention that designation of an additional ETC in the rural areas at issue will reduce investment in infrastructure, raise rates, reduce service quality to consumers in rural areas or result in loss of network efficiency.⁸⁹ The Alabama Rural LECs have merely presented data regarding the number of loops per study area, the households per square mile in their wire centers, and the high-cost nature of low-density rural areas.⁹⁰ The evidence submitted is typical of most rural areas and does not, in and of itself, demonstrate that designation of RCC Holdings as an ETC will harm the affected rural telephone companies or undermine the Commission's policy of promoting competition in all areas, including high-cost areas.⁹¹ Moreover, the federal universal service support mechanisms support all lines served by ETCs in rural and high-cost areas.⁹² Under the Commission's rules, RCC Holdings' receipt of high-cost support will not affect the per-line support amount that the incumbent carrier receives.⁹³ Therefore, to the extent that RCC Holdings provides new lines to currently unserved customers or second lines to existing wireline subscribers, it will have no impact on the amount of universal service support available to the incumbent rural telephone companies for those lines they continue to serve.⁹⁴

27. Additionally, we conclude that designation of RCC Holdings as an ETC does not raise the rural creamskimming concerns alleged by the Alabama Rural LECs and NTCA.⁹⁵ Rural creamskimming occurs when competitors seek to serve only the low-cost, high revenue customers in a rural telephone company's study area.⁹⁶ In this case, RCC Holdings, because the contour of its CMRS licensed area differs from the existing rural telephone companies' study areas, will be unable to completely serve the study areas of seven rural telephone companies. Generally, a request for ETC designation for an area less than the entire study area of a rural telephone company might raise concerns that the petitioner will be

⁸⁹ See Alabama Commission Comments at 2; NTCA Comments at 3; and, Alabama Rural LECs Comments at 16. See Rural LECs Sept. 5 *ex parte*. In discussing network efficiencies, the Alabama Rural LECs contend that in high-cost, low density areas, there is a loss of efficiency in the network when more than one carrier serves the same territory. The Alabama Rural LECs do not state, however, whether their argument extends to a wireless competitor that provides new lines to unserved customers or second lines to existing customers. See Rural LECs Sept. 5 *ex parte* at 1, 3-4, and 8-9.

⁹⁰ For example, although Millry indicates that 89% of its study area contains less than 100 households per square mile and its study area's average density is 6.8 households per square mile, it provides no evidence to show the harm that would come to Millry as a result of RCC Holdings' ETC designation.

⁹¹ See *Universal Service Order*, 12 FCC Rcd at 8802-03, para. 50. The Commission has noted that competition may provide incentives to the incumbent companies to implement new operating efficiencies, lower prices, and offer better service to customers. See *Western Wireless Pine Ridge Order*, 16 FCC Rcd at 18138-39, para. 15.

⁹² See *Western Wireless Pine Ridge Order*, 16 FCC Rcd at 18138-39, para. 15.

⁹³ See *Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244, paras. 136-164 (2001) (*RTF Order*), as corrected by Errata, CC Docket Nos. 96-45, 00-256 (Acc. Pol. Div. rel. Jun. 1, 2001).

⁹⁴ See *Western Wireless Pine Ridge Order*, 16 FCC Rcd at 18138-39, para. 15.

⁹⁵ See Alabama Rural LECs Comments at 20-21, NTCA Comments at 6. Although parties have asserted that RCC Holdings is creamskimming, we find that the record does not support such allegations.

⁹⁶ See *Recommended Decision*, 12 FCC Rcd at 180, para. 172. Creamskimming refers to the practice of targeting only the customers that are the least expensive to serve, thereby undercutting the ILEC's ability to provide service throughout the area. See, e.g., *Universal Service Order*, 12 FCC Rcd at 8881-2, para. 189.

able to creamskim in the rural study area.⁹⁷ In this case, however, RCC Holdings commits to provide universal service throughout its licensed service area. It therefore does not appear that RCC Holdings is deliberately seeking to enter only certain areas in order to creamskim. Notwithstanding, we recognize that the lowest cost portion of a rural study area may be the only portion of the study area that a wireless carrier is licensed to serve.⁹⁸

28. Without resolving the legal and policy issues that such a scenario would raise, we have analyzed the record before us in this case and find that RCC Holdings' designation throughout its licensed service area will not result in rural creamskimming. In fact, our analysis of the population density of each of the affected wire centers reveals that RCC Holdings will not be serving only low-cost areas at the exclusion of any high cost areas.⁹⁹ Moreover, of the seven rural telephone companies whose study areas RCC Holdings will not serve completely, five of these companies have filed disaggregation and targeting plans to create low-cost and high-cost zones, thereby substantially minimizing opportunities for rural creamskimming. Such opportunities are minimized because, as explained below, under disaggregation and targeting, a competitive ETC is limited to receiving the per-line support established by the rural telephone company in low-cost and/or high-cost zones.

29. Any concerns that RCC Holdings seeks deliberately to creamskim are minimized by the fact that RCC Holdings is constrained to provide service where it is licensed by the Commission and because RCC Holdings commits to providing universal service throughout its licensed territory in Alabama.¹⁰⁰ RCC Holdings seeks to provide service in an area that is smaller than seven rural telephone companies' study areas because the contour of its CMRS licensed area is different than that of the underlying wireline study areas.¹⁰¹

30. We recognize that the lowest cost portions of a rural study area may be the only portions of the affected study area that a wireless carrier is licensed to serve, which theoretically could have an adverse impact on a rural telephone company. NTCA argues that RCC Holdings should not be designated as an ETC if this is the case.¹⁰² We find, however, that such concerns regarding de facto creamskimming are minimized by the facts in this case. Although there are other factors that are useful in defining high-cost areas, a low population density typically indicates a high-cost area.¹⁰³ Our analysis of

⁹⁷ See *Recommended Decision*, 12 FCC Rcd at 180, para. 172 (stating that potential "cream skimming" is minimized when competitors, as a condition of eligibility for universal service support, must provide services throughout a rural telephone company's study area).

⁹⁸ See NTCA Comments at 6.

⁹⁹ Using the household count from the 2000 Census, the Alabama Rural LECs filed an *ex parte* providing data on households per square mile in the wire centers of the rural telephone companies. See Letter from Mark D. Wilkerson, Counsel for the Alabama Rural LECs, to Marlene Dortch, FCC, dated Sept. 6, 2002 (Rural LECs Sept. 6 *ex parte*).

¹⁰⁰ See RCC Holdings Petition at 12.

¹⁰¹ *Id.*

¹⁰² See NTCA Comments at 6.

¹⁰³ See *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Second Report and Order and Further Notice of Proposed Rulemaking, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fifteenth Report and Order, *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation*, CC Docket No. 98-77, Report and Order, *Prescribing the Authorized Rate of Return From Interstate Services of Local Exchange Carriers*, CC Docket No. 98-166, Report and Order, 16 FCC Rcd 19628, para. 28 (2001) (*MAG Order*), *recon. pending* (discussing Rural Task Force White Paper 2 at <<http://www.wutc.wa.gov/rtf>>) (stating that "[r]ural carriers generally serve more sparsely populated areas and fewer large, high-volume subscribers than non-rural carriers" and that "[t]he isolation of rural carrier service areas

the population data for each of the rural wire centers, including the wire centers not covered by RCC Holdings' licensed service area, reveals that RCC Holdings will not be serving only the low-cost portions of the affected study areas at the exclusion of high cost areas.¹⁰⁴ In fact, our analysis reveals that RCC Holdings is serving many of the higher cost, lower density wire centers.¹⁰⁵ For example, of the 27 rural wire centers RCC Holdings can serve completely, 21 wire centers have fewer than 13 households per square mile. Sixteen of these 21 wire centers have fewer than 10 households per square mile. The average population density for areas served by rural carriers is 13 persons per square mile, compared with an average of 105 persons per square mile for areas served by non-rural carriers.¹⁰⁶

31. Moreover, another factor that supports our finding that designation of RCC Holdings as an ETC does not raise rural creamskimming concerns is the fact that five of the rural telephone companies whose study areas RCC Holdings is unable to serve completely – Butler Telephone Company, Alltel Alabama, Millry Telephone Company, Frontier Communications of the South, Inc., and Frontier Communications of Alabama, Inc. – have filed disaggregation and targeting plans with the Alabama Commission and the Universal Service Administrative Company (USAC).¹⁰⁷ In the *RTF Order*, the Commission determined that support should be disaggregated and targeted below the study area level to eliminate uneconomic incentives for competitive entry caused by the averaging of support across all lines served by a carrier within its study area.¹⁰⁸ Under disaggregation and targeting, per-line support is more closely associated with the cost of providing service.¹⁰⁹ Five of the affected rural telephone companies have disaggregated and targeted available support in their service areas to zones at the wire center level, creating “low-cost” zones and “high-cost” zones. Based on our review of the rural telephone companies' plans, the per-line support available to competitive ETCs in the wire centers located in “low-cost” zones is less than the amount a competitive ETC could receive if it served in one of the wire centers located in the “high-cost” zones. Therefore, the Alabama Commission's concern that disaggregation and targeting support may not limit creamskimming is not supported by the disaggregation data in this case.¹¹⁰ If RCC Holdings were to attempt to receive a windfall by serving only the lower cost areas in a disaggregated and targeted service area, it would not succeed because it is limited to receiving the per-line support established by the rural telephone company in a “low-cost” zone. The fact that disaggregation and targeting is in effect for these five rural telephone companies supports our finding that creamskimming is not a concern.

32. Finally, we note that several parties express concern about the nature of high-cost support with regard to competitive ETCs. Specifically, several commenters express concern about subsidizing

creates numerous operational challenges, including high loop costs, high transportation costs for personnel, equipment, and supplies, and the need to invest more resources to protect network reliability”).

¹⁰⁴ See Rural LECs Sept. 6 *ex parte*.

¹⁰⁵ *Id.*

¹⁰⁶ See *MAG Order*, 16 FCC Rcd at 19628, para. 28, n.79.

¹⁰⁷ See *USAC: High Cost Disaggregation - Checklist* (printed Aug. 13, 2002) at <<http://www.universalservice.org/hc/disaggregation/checklist.asp>>. (USAC Disaggregation Checklist). The USAC Disaggregation Checklist lists the rural telephone companies that have filed disaggregation plans and indicates which disaggregation paths were chosen by the LECs that filed. Of the two rural telephone companies that have not elected to disaggregate, Mon-Cre Telephone Cooperative Inc. certified that it will not disaggregate and Interstate Telephone Company did not select any disaggregation path. The USAC Disaggregation Checklist for Alabama only listed companies that filed disaggregation plans or certified that they did not wish to disaggregate. Incumbent LECs that fail to select a disaggregation path by the deadline set by the Commission are not permitted to disaggregate and target federal high-cost support unless ordered to do so by the state commission. See 47 C.F.R. § 54.315(a).

¹⁰⁸ See *RTF Order*, 16 FCC Rcd at 11302, para. 145.

¹⁰⁹ *Id.*

¹¹⁰ Alabama Commission Comments at 6.

multiple lines of different technologies used by the same subscriber.¹¹¹ The Alabama Rural LECs claim that as the number of companies eligible to receive funding increases, the resulting demand on universal service funding could raise the cost of the support mechanisms to an unsustainable level.¹¹² In addition, NTCA states that, although the Commission's rules require that a competitive ETC will receive support to the extent it "captures" the subscriber lines of an incumbent local exchange carrier (LEC), it is unclear whether the word "capture" means only instances where the subscriber abandoned the incumbent LEC's service for the competitor's service, or whether it includes instances where the subscriber adds service from the competitor in addition to the incumbent's service.¹¹³ We recognize that these parties raise important issues regarding universal service high-cost support. We find, however, that these concerns are beyond the scope of this Order, which considers whether to designate a particular carrier as an ETC. As noted above, the Commission has recently requested the Joint Board to provide recommendations to the Commission on the Commission's rules relating to high-cost universal service support in study areas in which a competitive ETC is providing service, as well as the Commission's rules regarding support for second lines.¹¹⁴

D. Designated Service Area

33. We designate RCC Holdings as an ETC throughout its CMRS licensed service area in the Alabama 3, 4, 5, and 7 Rural Service Areas, Cellular Market Areas 309, 310, 311, and 313. RCC Holdings is designated an ETC in the areas served by the non-rural carriers BellSouth Telecomm Inc., Contel of the South, Inc., and GTE South, Inc., as listed in Appendix A.¹¹⁵ RCC Holdings is also designated as an ETC in the areas served by rural telephone companies whose study areas RCC Holdings is able to serve completely, as listed in Appendix B.¹¹⁶ We also designate RCC Holdings as an ETC for portions of seven rural telephone company study areas that it is not licensed to serve completely, as listed in Appendix C, subject to the Alabama Commission's agreement on redefining the rural telephone companies' service areas by wire center boundaries.¹¹⁷

34. As discussed below, we have determined that where RCC Holdings cannot provide service throughout a rural telephone company study area, we will redefine that rural telephone company's service area for purposes of ETC designation by wire center boundary. Due to the boundaries of RCC Holdings' CMRS licensed service area in Alabama, however, there will be three rural wire centers that RCC Holdings will not be able to serve completely: (1) Lapine in Mon-Cre Telephone Cooperative Inc.'s

¹¹¹ See Alabama Commission Comments at 4-6, Alabama Rural LECs Comments at 18-19, Alabama Rural LECs Reply Comments at 6-7 and NTCA Comments at 9.

¹¹² See Alabama Rural LECs Comments at 18-19; Alabama Commission Comments at 5; and, Rural LECs Sept. 5 *ex parte*.

¹¹³ NTCA Comments at 10. See also 47 C.F.R. § 54.307.

¹¹⁴ See *Federal-State Joint Board on Universal Service*, CC Docket 96-45, FCC 02-307, Order (rel. Nov. 8, 2002).

¹¹⁵ See RCC Holdings Petition at 9. See August 26 Supplement, Exhibit D. The wire centers in Appendix A only partially served by RCC Holdings are depicted with the word "partial." We designate RCC Holdings as an ETC in these partially served wire centers pursuant to sections 214(e)(5) and (e)(6) of the Act. When designating a service area served by a non-rural carrier, the Commission may designate a service area that is smaller than the contours of the incumbent carrier's study area. See *Universal Service Order* at 8879-80, para. 185 (stating that if a service area was "simply structured to fit the contours of an incumbent's facilities, a new entrant, especially a CMRS-based provider, might find it difficult to conform its signal or service area to the precise contours of the incumbent's area, giving the incumbent an advantage.")

¹¹⁶ See RCC Holdings Petition at 9-10. See August 26 Supplement, Exhibit E.

¹¹⁷ See Section III.E, *infra*. We note that the Commission has stated that the level of disaggregation should be considered when determining whether to certify an ETC for a service area other than a rural carrier's entire study area. See *RTF Order*, 16 FCC Rcd at 11308-9, para. 164. See also para. 31, *supra*.

study area; (2) Shawmut in Interstate Telephone Company's study area; and, (3) Camp Hill in Alltel of Alabama's study area. We conclude that it is in the public interest to designate RCC Holdings as an ETC for the portions of these wire centers it is able to serve. Our analysis of the public interest--that is, the consumer benefits, potential harm to consumers, and the effect of this ETC designation on rural telephone companies--does not change based on RCC Holdings' ability to serve only a portion of three of the affected wire centers. The affected consumers in these wire centers will benefit from the provision of competitive service. Further, parties have offered no evidence of harm regarding RCC Holdings' ability to partially serve three of the affected rural wire centers.

35. We find that any concern that RCC Holdings will be creamskimming in the redefined service areas is substantially minimized by the facts in this case. As discussed above, RCC Holdings seeks ETC designation throughout its licensed service area. Based on our analysis of population density as discussed in Section III.C, it does not appear that RCC Holdings will be serving only low-cost areas at the exclusion of high cost areas. First, because the Lapine wire center in the study area of Mon-Cre Telephone Cooperative Inc. is a low-density, high-cost wire center, concerns regarding creamskimming are substantially eliminated. Second, RCC Holdings is able to serve a portion of the Shawmut wire center and the entirety of the remainder of Interstate Telephone Company's study area. Because RCC Holdings is serving all of the high-cost areas in that study area, we find that any creamskimming concerns are substantially minimized. Third, the last wire center is a low-density, high-cost wire center belonging to Alltel of Alabama, which disaggregated its study area and therefore, we find that RCC Holdings' potential to creamskim in this area is substantially minimized. Thus, we conclude that it is in the public interest to designate RCC Holdings as an ETC in the portions of these wire centers it is licensed to serve.

36. In addition, we designate RCC Holdings as an ETC for the portion of GTC, Inc.'s (GTC's) study area that is within the state of Alabama.¹¹⁸ The designated service area differs from the study area of GTC because the study area extends beyond the boundaries of the state of Alabama into the state of Florida. This modification is necessary, however, because under section 214(e)(6), the Commission is effectively authorized to stand in the place of the state commission for purposes of designating carriers over which the state does not have jurisdiction. As a result, the Commission's authority to designate RCC Holdings as an ETC in GTC's study area is limited to the portion of GTC's study area that is in the state of Alabama. The Commission's authority to perform the designation is no greater than that of the state that would have otherwise made the designation.¹¹⁹ Therefore, we do not have the discretion in these circumstances to include the entire study area of GTC as part of RCC Holdings' service area.¹²⁰ Accordingly, we include in RCC Holdings' service area the portion of GTC's study area that is in the state of Alabama.

¹¹⁸ See August 26 Supplement, Map. The remainder of GTC, Inc.'s study area extends into Florida.

¹¹⁹ See *Federal-State Joint Board on Universal Service, Petitions for Reconsideration of Western Wireless Corporation's Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, Order on Reconsideration, CC Docket No. 96-45, 16 FCC Rcd 19144 at 19147, para. 8 (2001) (*Western Wireless Reconsideration Order*).

¹²⁰ See *Western Wireless Reconsideration Order*, 16 FCC Rcd at 19147, para. 8. In the *Western Wireless Reconsideration Order*, the Commission stated that Congress did not envision "that any state commission might need to involve another state, or seek its permission, before designating an ETC for an existing service area otherwise lying wholly within the designating state's borders, or that another state potentially could interfere with a state's authority to designate an additional ETC within its own borders." *Id.* para. 9. The Texas Public Utilities Commission has reached a similar conclusion. See *Application of WWC Texas RSA Limited Partnership for Designation as an Eligible Telecommunications Carrier*, PUC Docket Nos. 22289 and 22295, SOAH Docket Nos. 473-00-1167, Order at 6-7 (Oct. 2000).

E. Redefining Rural Telephone Company Service Areas For Purposes of ETC Designation

37. We believe, based on the record before us, that it would be consistent with the public interest to redefine the service areas of Butler Telephone Company, Alltel Alabama, Interstate Telephone Company, Millry Telephone Company, Mon-Cre Telephone Cooperative, Frontier Communications of the South, Inc., and Frontier Communications of Alabama, Inc. such that each wire center is a separate service area.¹²¹ Our decision to redefine the service areas of these seven telephone companies for purposes of ETC designation is subject to the review and final agreement by the Alabama Commission in accordance with applicable Alabama Commission requirements. Accordingly, we submit our redefinition proposal to the Alabama Commission and request that it examine such proposal based on its unique familiarity with the rural areas in question.

38. In order to designate RCC Holdings as an ETC in a service area that is smaller than the affected rural telephone company study areas, we must redefine the service areas of the rural telephone companies in accordance with section 214(e)(5) of the Act.¹²² We redefine the affected service areas only to determine the portions of rural service areas in which to designate RCC Holdings and future competitive carriers seeking ETC designation in the same rural service areas. Any future competitive carrier seeking ETC designation in these redefined rural service areas will still be required to prove, to us or the Alabama Commission, that such designation will be in the public interest under section 214(e)(6) or section 214(e)(2), respectively.¹²³ In defining the rural telephone companies' service areas to be different than their study areas, we are required to act in concert with the relevant state commission, taking into account the concerns of the Joint Board.¹²⁴ As noted above, the Joint Board's concerns regarding rural telephone company service areas as discussed in the *Recommended Decision* are as follows: (1) minimizing rural creamskimming; (2) recognizing that the 1996 Act places rural telephone companies on a different competitive footing from other carriers; and (3) recognizing the administrative burden of requiring rural telephone companies to calculate costs at something other than a study area level.¹²⁵ We find that the proposed redefinition adequately addresses these concerns.

39. First, we conclude that redefining the affected rural telephone company service areas at the wire center level should not result in opportunities for creamskimming. Because RCC Holdings is limited to providing service only where it is licensed by the Commission and because RCC Holdings commits to providing universal service throughout its licensed territory in Alabama, concerns regarding creamskimming are minimized. Moreover, with regard to arguments that we should not redefine rural service areas where doing so would have the effect of creamskimming, the record shows that the majority of the affected wire centers have exceedingly low population densities. We also find that the potential for RCC Holdings' or a future competitive ETC's designation to have the effect of creamskimming is substantially minimized by the fact that several of the affected rural telephone companies in this proceeding have filed disaggregation and targeting plans at the wire center level.¹²⁶ Therefore, we conclude based on the particular facts of this case that there is little likelihood of rural creamskimming.

40. Second, our decision to redefine the service areas of the affected rural telephone companies

¹²¹ RCC Holdings requested that the Commission redefine the service areas of the incumbent LECs by wire center boundary. See RCC Holdings Petition at 11. See also August 26 Supplement, Exhibit F.

¹²² See 47 U.S.C. § 214(e)(5).

¹²³ See 47 U.S.C. § 214(e)(2) and (e)(6).

¹²⁴ See 47 U.S.C. § 214(e)(5).

¹²⁵ See *Recommended Decision*, 12 FCC Rcd at 179-80, paras. 172-74. See para. 8, *supra*. See also RCC Holdings Petition at 12-13.

¹²⁶ See para 31, *supra*.

includes special consideration for the affected rural carriers. The record does not convince us that the proposed redefinition will harm the incumbent rural carriers. We have considered the evidence provided by the Alabama Rural LECs, such as the number of loops per study area, the households per square mile in their wire centers, the high-cost nature of their low-density rural areas and their contention that designation of RCC Holdings as a competitive ETC will result in increased rates, reduced investment or inefficiencies in the network. As explained above, however, none of the Alabama Rural LECs' data has shown actual harm or demonstrated that the rural areas in question are incapable of sustaining more than one ETC.¹²⁷ The universal service mechanism supports all lines served by ETCs in rural areas.¹²⁸ Therefore, to the extent that RCC Holdings or any future competitive ETC provides new lines to currently unserved customers or second lines to existing wireline subscribers, it will have no impact on the amount of universal service support available to the incumbent rural telephone companies for those lines they continue to serve.¹²⁹ Similarly, redefining the service areas of the affected rural telephone companies will not change the amount of universal service support that is available to these incumbents.

41. Third, we find that redefining the rural telephone company service areas by wire center boundary will not require the rural telephone companies to determine their costs on a basis other than the study area level. Rather, the redefinition merely enables competitive ETCs to serve areas that are smaller than the entire incumbent rural telephone company's study area. Our decision to redefine the service areas does not modify the existing rules applicable to rural telephone companies for calculating costs on a study area basis. Therefore, we find that the concern of the Joint Board that redefining rural service areas would impose additional administrative burdens on affected rural telephone companies is not at issue here.

42. In accordance with section 54.207(d) of the Commission's rules, we submit this order to the Alabama Commission.¹³⁰ We request that the Alabama Commission treat this Order as a petition to redefine a service area under section 54.207(d)(1) of the Commission's rules.¹³¹ RCC Holdings' ETC designation in the rural telephone company service areas that it cannot serve entirely depends on the Alabama Commission's review and agreement with the redefinition proposal herein.¹³² We find that the Alabama Commission is uniquely qualified to examine the redefinition proposal because of its familiarity with the rural service areas in question. The redefinition of the rural telephone company service areas that RCC Holdings cannot serve completely will be effective on the date that the Alabama Commission agrees with this Commission's proposed redefinition. RCC Holdings' ETC designation in these areas will be

¹²⁷ See para. 26, *supra*.

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ 47 C.F.R. § 54.207(d). RCC Holdings states in its petition that it may be designated as an ETC once the Commission redefines service areas in accordance with section 54.207(c) of the Commission's rules. We disagree because section 54.207(c) contemplates a situation where a state commission has proposed a new service area definition and, as such, we are not able to apply section 54.207(c) in this instance. Instead, we will consider RCC Holdings' request to redefine service areas under section 54.207(d) of the Commission's rules.

¹³¹ We note that, at this time, the state of Alabama has no codified procedures for redefining service areas. See August 26 Supplement at 1.

¹³² In the *Universal Service Order*, the Commission concluded that the "pro-competitive, de-regulatory" objectives of the 1996 Act would be furthered if the Commission minimized any procedural delay caused by the need for the federal-state coordination on redefining rural service areas. See *Universal Service Order*, 12 FCC Rcd at 8880-1, para. 187. Therefore, the Commission adopted section 54.207 of the Commission's rules by which the state commissions may obtain agreement of the Commission when proposing to redefine a rural service area. *Id.* at 8881, para 187. Similarly, the Commission adopted a procedure in section 54.207 to address the occasions when the Commission, on its own motion, seeks to redefine a rural service area. *Id.* at 8881, para. 188. The Commission stated that "in keeping with our intent to use this procedure to minimize administrative delay, we intend to complete consideration of any proposed definition of a service area promptly." *Id.*

simultaneously effective on that date. In all other areas, as described herein, RCC Holdings' ETC designation is effective immediately. If after its review the Alabama Commission determines that it does not agree with the redefinition proposal herein, we will reexamine our decision with regard to redefining the affected rural service areas.

IV. ANTI-DRUG ABUSE ACT CERTIFICATION

43. Pursuant to section 5301 of the Anti-Drug Abuse Act of 1988, no applicant is eligible for any new, modified, or renewed instrument of authorization from the Commission, including authorizations issued pursuant to section 214 of the Act, unless the applicant certifies that neither it, nor any party to its application, is subject to a denial of federal benefits, including Commission benefits.¹³³ This certification must also include the names of individuals specified by section 1.2002(b) of the Commission's rules.¹³⁴ RCC Holdings has provided a certification consistent with the requirements of the Anti-Drug Abuse Act of 1988.¹³⁵ We find that RCC Holdings has satisfied the requirements of the Anti-Drug Abuse Act of 1988, as codified in sections 1.2001-1.2003 of the Commission's rules.

V. ORDERING CLAUSES

44. Accordingly, IT IS ORDERED that, pursuant to the authority contained in section 214(e)(6) of the Communications Act, 47 U.S.C. § 214(e)(6), and the authority delegated in sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, RCC Holdings, Inc. IS DESIGNATED AN ELIGIBLE TELECOMMUNICATIONS CARRIER throughout its licensed service area in the state of Alabama to the extent described herein.

45. IT IS FURTHER ORDERED that, pursuant to the authority contained in section 214(e)(5) of the Communications Act, 47 U.S.C. § 214(e)(5), and sections 0.91, 0.291 and 54.207(d) and (e) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 54.207(d) and (e), the request of RCC Holdings, Inc. to redefine the service areas of Butler Telephone Company, Alltel Alabama, Interstate Telephone Company, Millry Telephone Company, Mon-Cre Telephone Cooperative, Frontier Communications of the South, Inc., and Frontier Communications of Alabama, Inc. IS GRANTED PENDING the agreement of the Alabama Public Service Commission with our redefinition of the service areas for those rural telephone companies. Upon the effective date of the agreement of the Alabama Public Service Commission with our redefinition of the service areas for those rural telephone companies, our designation of RCC Holdings, Inc. as an ETC for such areas as set forth herein shall also take effect.

¹³³ 47 U.S.C. § 1.2002(a); 21 U.S.C. § 862.

¹³⁴ Section 1.2002(b) provides that a certification pursuant to that section shall include: "(1) If the applicant is an individual, that individual; (2) If the applicant is a corporation or unincorporated association, all officers, directors, or persons holding 5% or more of the outstanding stock or shares (voting/and or non-voting) of the petitioner; and (3) If the applicant is a partnership, all non-limited partners and any limited partners holding a 5% or more interest in the partnership." 47 C.F.R. § 1.2002(b).

¹³⁵ See RCC Holdings Petition at 16 and Exhibit I.

46. IT IS FURTHER ORDERED that a copy of this Memorandum Opinion and Order SHALL BE transmitted by the Wireline Competition Bureau to the Alabama Public Service Commission and the Universal Service Administrative Company.

FEDERAL COMMUNICATIONS COMMISSION

William F. Maher, Jr.
Chief, Wireline Competition Bureau

APPENDIX A

ALABAMA NON-RURAL WIRE CENTERS FOR INCLUSION IN
RCC HOLDINGS' ETC SERVICE AREA

BellSouth Telecomm Inc. – AL	Contel of the South, Inc.	GTE South, Inc.
York	Vernon	Forest Home
Linden	Fayette (partial)	Georgiana
Livingston	Berry (partial)	McKenzie
Eutaw	Sulligent (partial)	Luverne
Tuscaloosa (partial)	Ethelsville	Brantley
Demopolis	Carrollton	Dozier
Greensboro	Reform	Gantt
Uniontown	Gordo	Red Level
Marion	Aliceville (partial)	Andalusia (partial)
Centreville	Panola (partial)	Opp
West Blocton	Coffeeville (partial)	Elba
Montevallo (partial)	Pine Hill	New Brockton
Calera (partial)	Alberta	Brundidge
Maplesville	Orville	Banks
Selma (partial)	Jemison	Enterprise (partial)
Fort Deposit	Thorsby	Kinston
Prattville (partial)	Rockford	Samson (partial)
Clanton	Notsaluga (partial)	Greenville
Wetumpka (partial)	Tallahassee (partial)	Geneva
Alexander (partial)	Winfield (partial)	Hartford
Dadeville	Detroit (partial)	Slocomb (partial)
Goodwater	Ashland	Dothan (partial)
Sylacauga	Lineville	
Childersburg	Delta	
Talladega	Chulafinne (partial)	
Munford (partial)	Lincoln (partial)	
Lafayette	Surfside (partial)	
Auburn (partial)	Heflin	
Opelika (partial)	Wadley	
Piedmont (partial)	Wedowee	
Montgomery (partial)	Morrissons (partial)	
Thomasville (partial)	Lecta (partial)	
BellSouth Telecomm Inc.-GA	BellSouth Telecomm Inc.-MS	
LaGrange (partial)	Quitman (partial)	

APPENDIX B

**ALABAMA RURAL TELEPHONE COMPANY STUDY AREAS FOR INCLUSION IN
RCC HOLDINGS' ETC SERVICE AREA**

Frontier Communications of Lamar County, Inc.

Pine Belt Telephone Company, Inc.

Hayneville Telephone Company Inc.

Moundville Telephone Company

Roanoke Telephone Company Inc.

GTC, Inc.

APPENDIX C

**ALABAMA RURAL TELEPHONE COMPANY WIRE CENTERS AND PORTIONS THEREOF
FOR INCLUSION IN RCC HOLDINGS' ETC SERVICE AREA**

Butler Telephone Company Inc.

Pennington
Lisman
Butler
Needham
Goshen

Alltel of Alabama

Camp Hill (Partial)

Frontier Communications of the South, Inc.

Camden
Catherine
Thomaston

Frontier Communications of Alabama, Inc.

Pineapple

Interstate Telephone Company

Fredonia
West Point
Huguley
Shawmut (Partial)

Millry Telephone Company

Silas
Gilbertown

Mon-cre Telephone Cooperative Inc.

Lapine (Partial)